

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

Southern District of West Virginia

Bluefield Division

FILED

JAN 27 2020

RORY L. PERRY II, CLERK
U.S. District Court
Southern District of West Virginia

Case No.

1:20-cv-00063

(to be filled in by the Clerk's Office)

Benjamin Tillman

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Unit Manager B. Huffman A-Zunit
Warden, C. MURUKA
Regional Director; D.J. Harman
Central Office, Ian Connors, and et al KATHLEEN
SAWYER-HAWK

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS (Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Benjamin Tillman

All other names by which
you have been known:

NA

ID Number

04060-017

Current Institution

F.C.I. McDowell

Address

P.O. Box 1009Welch
CityWV
State24801
Zip Code**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

B. HuffmanJob or Title (*if known*)Unit Manager A-2 unit, McDowell F.C.I.

Shield Number

NA

Employer

Unit Manager (B.O.P.)

Address

F.C.I. McDowell P.O. Box 1029Welch
CityWV
State28401
Zip Code☒ Individual capacity

Defendant No. 2

Name

Warden (C. Maruka)Job or Title (*if known*)Warden

Shield Number

NA

Employer

Warden at F.C.I. McDowell

Address

F.C.I. McDowell (B.O.P.) P.O. Box 1029Welch
CityWV
State28401
Zip Code☒ Individual capacity

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Defendant No. 3

Name

D. J. Harman

Job or Title (if known)

Regional Director

Shield Number

MA

Employer

B.O.P. Regional Director

Address

Mid-Atlantic Region; 302 Sentinel Drive,
Suite 200
Annapolis Junction Maryland 20701
City State Zip Code☒ Individual capacity

Defendant No. 4

Name

(Ian Connors) and Kathleen Sawyer-Hawk

Job or Title (if known)

(B.O.P. Director and National Inmate Appeals)

Shield Number

MA

Employer

B.O.P. Director and National Inmate Appeals

Address

320 First St, NW
Washington DC 20534
City State Zip Code☒ Individual capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☒ Federal officials (a *Bivens* claim)☐ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the "deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws]." 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

(C) Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials? 8th Amendment (Cruel and Unusual Punishment)
1st Amendment "Retaliation in using the Grievance System"

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- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.
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III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (*check all that apply*):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☐ Convicted and sentenced state prisoner
- ☒ Convicted and sentenced federal prisoner
- ☐ Other (*explain*) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.
Please see Exhibit (A) and Attachments (B) and (C). with
(Memorandum of Law)
-

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C. What date and approximate time did the events giving rise to your claim(s) occur?
Please see Exhibits (A) (B) and (C) with memorandum of Law

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)
Please see Exhibits (A) (B) and (C) with memorandum of Law.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

Mental Anguish; Humiliation; Embarrassment, and Mental Distress / Emotional Distress.
I never received any treatment.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

Propose - Amount For CLAIM(S):

Defendant: (B. Huffman) = 20,000 in Damages

Defendant: (Warden C. Masuka) 15,000 in Damages

Defendant: (D. J. Harmon) Regional Director 15,000 in Damages

Defendants: (K. Sawyer-Hawk) B.O.P. Director 15,000 in Damages
And (IAN Connors) = 15,000 in Damages.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

- A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

F.C.I. McDowell

- B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

- C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☒ Yes

☐ No

☐ Do not know

If yes, which claim(s)?

All claims, But F.C.I. McDowell Refuse to adjudicate/
investigate ~~Any~~ of the claims, Also the Regional
Office and Central Office Staff.

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

Warden office, F.C.I. McDowell
Regional office Mid-Atlantic Region
Central office Washington D.C.

2. What did you claim in your grievance?

Staff misconduct / 8th Amendment violations
First Amendment Violations "Retaliation from using the
Grievance System"

3. What was the result, if any? Cover-up for this misconduct, Frivolous
And unreasonable rejection Notices, And Technicalities
Done to not consider and Adjudicate the grievances.
(Please see memorandum of Law Attached)

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

After the Warden's office, the Regional office and
Central office continues to give plaintiff the merry-go-
round with frivolous rejections, And unfounded rejection
Notices. (Please memorandum of Law Attached)

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

The Regional Office and Central Office refuse to allow the Plaintiff to have his claims adjudicated, by giving Plaintiff the merry-go-round to discourage Plaintiff. PLEASE SEE (Memorandum of Law)

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

(Please see memorandum of Law Attached)

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

SAME AS ABOVE, ALSO SEE (Affidavit under oath) and (Memorandum of Law Attached)

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

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- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

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☐ Yes

☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing:

Benjamin Tillman 1-24-20

Signature of Plaintiff

Benjamin Tillman

Printed Name of Plaintiff

Benjamin Tillman

Prison Identification #

04060-017

Prison Address

F.C.I. McDowell P.O. Box 1009Welch
CityWV
State24801
Zip Code**B. For Attorneys**

Date of signing:

NA

Signature of Attorney

NA

Printed Name of Attorney

NA

Bar Number

NA

Name of Law Firm

NA

Address

NANA
CityNA
StateNA
Zip Code

Telephone Number

NA

E-mail Address

NA